

Message Text

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ACTION OES-07

INFO OCT-01 EUR-12 ISO-00 ACDA-12 CIAE-00 INR-10 IO-13
L-03 NSAE-00 NSC-05 EB-08 NRC-05 SOE-02 DODE-00
SS-15 SP-02 CEQ-01 PM-05 /101 W
-----057740 142003Z /46

R 141919Z JUN 78
FM AMEMBASSY VIENNA
TO SECSTATE WASHDC 6811
INFO USDOEHQ WASHDC
USDOEHQ GERMANTOWN

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USIAEA

DEPT PASS IO/SCT
DOE PASS AMMONS, IA

E.O. 11652: N/A
TAGS: IAEA, TECH
SUBJECT: TRANSFER OF SAFEGUARDS SAMPLES

REF: STATE 233214 (1977)

1. IN LETTER TO DR. ROMETSCH, DATED OCTOBER 4, 1977,
MISSION CONVEYED INFO REFTEL. IN RESPONSE TO OUR LETTER
OF OCTOBER 4, MISSION HAS RECEIVED LETTER FROM
SECRETARIAT (ROMETSCH) DATED MAY 18, 1978. COPIES OF BOTH
LETTERS POUCHED AMMONS, DOE.

2. SECRETARIAT'S LETTER OF MAY 18 SUBMITS FOR OUR
COMMENTS THE DRAFT OF A LETTER WHICH AGENCY WOULD USE TO
OBTAIN FROM GOVERNMENTS HOUSING NETWORK ANALYTICAL
LABORATORIES A WRITTEN UNDERTAKING THAT THE MATERIALS SENT
BY THE AGENCY TO THE NWAL SHALL BE USED SOLELY FOR
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SPECIFIC PEACEFUL PURPOSES. MISSION BELIEVES SECRETARIAT'S
DRAFT UNDERTAKING MEETS THE PEACEFUL USES REQUIREMENT
STATED REFTEL. PLEASE ADVISE.

3. THE SECRETARIAT DRAFT UNDERTAKING LETTER INCLUDES A
PARAGRAPH (PARA 3) WHICH WOULD SUBJECT THE TRANSFERRED
MATERIALS TO SAFEGUARDS. INCLUSION OF THE SAFEGUARDS

PROVISION RESULTS FROM STATEMENT IN OUR LETTER OF OCTOBER 4 SAYING: "THERE IS NO NEED FOR MATERIALS TO BE TRANSFERRED TO THE SCOPE OF ANOTHER AGREEMENT FOR COOPERATION, PROVIDED THEY REMAIN SUBJECT TO ALL TERMS AND CONDITIONS OF THE US-IAEA AGREEMENT FOR COOPERATION." SINCE ARTICLE V OF THE US-IAEA AGREEMENT FOR COOPERATION SETS FORTH, INTER ALIA, AGENCY GUARANTEES FOR APPLICATION OF SAFEGUARDS WITH RESPECT TO MATERIAL MADE AVAILABLE BY U.S., AGENCY LEGAL DIVISION FELT OBLIGED TO INCLUDE SAFEGUARDS PROVISION IN ITS LETTER TO NWAL HOST GOVERNMENTS, EXCEPT AS NOTED BELOW.

4. THOSE COUNTRIES HOUSING NWAL'S TO WHICH AGENCY WOULD SEND SAFEGUARDS SAMPLES FOR ANALYSIS ARE AUSTRIA, CZECHOSLOVAKIA, FRANCE, FRG, NETHERLANDS, UK, USSR AND USA. IN LETTER OF MAY 18, ROMETSCH STATES THAT: "THREE OF THE NWAL LABORATORIES ARE LOCATED IN NUCLEAR WEAPON STATES, ONE OF WHICH HAS NO SAFEGUARDS AGREEMENT WITH THE IAEA AND THE REMAINING TWO HAVING AGREEMENTS WHICH MAY NOT BE APPLICABLE TO THE MATERIAL IN QUESTION. IN THESE THREE CASES, IT SEEMS SENSIBLE TO OMIT ALL REFERENCE TO SAFEGUARDS AGREEMENTS FROM THE REQUESTS FOR PEACEFUL USES UNDERTAKINGS." ROMETSCH REQUESTS U.S. CONFIRMATION OF HIS PROPOSAL. (AGENCY IS USING NPT AS ITS RATIONALE IN EXEMPTING NWS FROM SAFEGUARDS IN THIS PROPOSAL.)

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5. SINCE ROMETSCH PROPOSAL WOULD APPLY SAFEGUARDS PROVISION SELECTIVELY, MISSION QUESTIONS DESIRABILITY OF CONCURRING WITH THIS ARRANGEMENT, WHICH IS DISCRIMINATORY. ON THE OTHER HAND, WE APPRECIATE SECRETARIAT'S VIEW THAT SINCE TRANSFERRED MATERIAL WOULD REMAIN SUBJECT TO "ALL TERMS AND CONDITIONS" OF THE US-IAEA AGREEMENT FOR COOPERATION, THERE IS NEED TO ACCOMMODATE ALL OF ARTICLE V OF THAT AGREEMENT.

6. MISSION HAS INFORMALLY DISCUSSED MATTER WITH AGENCY LEGAL STAFF CONCERNED AND SUGGESTED A POSSIBLE APPROACH TO RESOLVING THIS PROBLEM, MAKING CLEAR, HOWEVER, THAT WE DID NOT RPT NOT HAVE CONCURRENCE FROM WASHINGTON AGENCIES CONCERNED, WHICH WOULD BE ESSENTIAL. APPROACH SUGGESTED IS ALONG FOLLOWING LINES:

- A) ARTICLE V OF US-IAEA AGREEMENT FOR COOPERATION SPECIFIES, INTER ALIA, THAT "THE AGENCY GUARANTEES ... THAT THE SAFEGUARDS SET FORTH IN THE AGENCY STATUTE SHALL BE MAINTAINED AND IMPLEMENTED AS PROVIDED IN THE AGENCY STATUTE" ETC., WITH RESPECT TO U.S.-SUPPLIED NUCLEAR MATERIAL.

- B) ARTICLE XII OF THE AGENCY'S STATUTE CONTAINS THE SAFEGUARDS PROVISIONS, WHICH GIVES THE AGENCY CERTAIN "RIGHTS AND RESPONSIBILITIES TO THE EXTENT RELEVANT TO THE PROJECT OR ARRANGEMENT."

- C) INFCIRC/66/REV 2 AND INFCIRC/153 HAVE ELABORATED THE DETAILS OF THE "SAFEGUARDS SET FORTH IN THE AGENCY STATUTE," AND BOTH DOCUMENTS PROVIDE FOR EXEMPTION FROM SAFEGUARDS OF CERTAIN NUCLEAR MATERIALS UP TO SPECIFIED

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AMOUNTS.

- D) THE QUANTITIES OF SAMPLES TO BE DISTRIBUTED TO THE NWAL ARE SMALL AND WELL WITHIN THE EXEMPTION LIMITS SET FORTH IN INFCIRC/66/REV.2 AND INFCIRC/53. 150 GRAMS WERE DISTRIBUTED IN 1977 AND UP TO 600 GRAMS (MAXIMUM OF 200 GRAMS FISSILE MATERIAL) ARE ESTIMATED TO BE DISTRIBUTED IN 1978 TO SEVEN OR EIGHT LABORATORIES, OR ABOUT 25 GRAMS FISSILE MATERIAL PER LABORATORY. (THIS ESTIMATE IS CONSIDERED HIGH.)

- E) TAKING INTO ACCOUNT THE NATURE OF THE ARRANGEMENT INVOLVED, PLUS THE EXEMPTION PROVISIONS IN INFCIRC/66/REV. 2 AND INFCIRC/153, THE U.S. WOULD AGREE, AT THE AGENCY'S REQUEST, THAT SAFEGUARDS NOT RPT NOT BE REQUIRED ON THE SAMPLES TO BE DISTRIBUTED TO THE NWAL UP TO A MAXIMUM

AMOUNT (TO BE SPECIFIED) PER YEAR (OR FOR SOME LONGER SPECIFIED PERIOD OF TIME), PROVIDED THE OTHER TERMS AND CONDITIONS OF THE U.S.-IAEA AGREEMENT FOR COOPERATION ARE MET.

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7. AGENCY LEGAL AND SAFEGUARDS STAFF ARE STUDYING THIS PROPOSED APPROACH, BUT AT FIRST GLANCE, THEY ARE SYMPATHETIC TO THE IDEA, PARTICULARLY FROM THE STANDPOINT OF REDUCING UNNECESSARY PAPERWORK, ETC., E.G. REPORTING, ETC., WHICH WOULD BE INVOLVED IF SAFEGUARDS ON SUCH SAMPLES ARE REQUIRED IN CERTAIN STATES, AND ALSO BECAUSE IT WOULD REMOVE THE DISCRIMINATORY ELEMENT IN THEIR PROPOSAL.

8. MISSION WOULD APPRECIATE RECEIVING U.S. VIEWS ON FOREGOING, AS WELL AS REVIEW OF ENTIRE MATTER IN LIGHT OF RECENTLY PASSED U.S. NON-PROLIFERATION LEGISLATION.

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Message Attributes

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Type: TE
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